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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: DEC 14 2005
EAC 04 066 51426

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a China Market Specialist, Export Assistant. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel asserts that the petitioner will benefit the U.S. economy on a national scale. The petitioner, through counsel, submits additional evidence.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The only issue raised by the director is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, business consulting. The director then questioned whether the petitioner's impact would be more than regional. Initially, the petitioner asserted that the proposed benefits of his work would be increased exports to China. The petitioner asserts that this would be a national impact because his consulting work for multiple businesses "can generate direct guidance for U.S. small and medium-sized businesses" seeking to do business in China. Counsel reiterates this assertion on appeal, stating that his work with a finite number of companies will "encourage other small businesses, which in the past may have been apprehensive about entering into trade agreements with China, to start trading." Counsel further asserts that through the petitioner's "partnership with the China Council for the Promotion of International Trade ('CCPIT'), he can develop a matrix for U.S. small businesses to tap into the expanding China market." The petitioner's claim to be able to impact exports to China on a national scale appears little more than speculation. Even if we were to conclude that the *proposed* benefits would be national in scope, we concur with the director that the petitioner has not established that he will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

In his initial cover letter, the petitioner attests to several contributions to the field. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these

proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). For the reasons discussed below, we find that the record does not support the significance the petitioner ascribes to his roles and contributions, his claim to have promoted exports *to* China and his claim of connections with Chinese organizations.

As evidence of his "past record of achievements," the petitioner relies on working as a "senior business analyst" with International Profit Associates (IPA), his role with the International Alliance of Electronic Distributors (IAED), his role as a China Market Consultant for Electronic Resellers Association International (ERAI) and by organizing BJRI Board Meetings in Beijing.

The petitioner notes that two former Presidents and former Senator Bob Dole have spoken at IPA functions in 1998, 1999 and 2001, praising the company. In 2001, Harvard University's Business School featured IPA as a business model case study. The petitioner, however, was not hired until 2003. Thus, any prestige IPA might have enjoyed prior to that date cannot be credited to the petitioner. Moreover, the employment contract reveals that IPA paid the petitioner in commissions, per diem and mileage reimbursement. Upon hiring, the petitioner attended what appears to have been a large-scale sales seminar for newly hired "business analysts." Nothing in the record establishes that the petitioner provided any services other than selling the company's business management services to potential clients based on the company's prepared sales presentation. The record does not establish that the petitioner influenced the development of IPA's management consulting services or their marketing approach.

The petitioner asserts that, as a "corporate partner," he played an important role with IAED, a "Master Distributor" in electronics. Specifically, he asserts that he "constructed the market-entry analysis and formulated manufacturers relations." Initially, the petitioner submitted an unsigned letter from Richard Smith, Vice President of IAED, asserting that IAED was made up of "some 200 independent distributors." Mr. Smith explains that his role was to "identify and secure quality, competitively priced product lines and sales agreements with suppliers *from China*." (Emphasis added.) Mr. Smith asserts that the petitioner "finalized sales agreements with close to two dozen suppliers in less than six months." Mr. Smith provides similar information in a signed letter on appeal. While this role may demonstrate the petitioner's ability to secure imports from China to the United States, the petitioner's entire claim is that it is in the national interest of the United States to increase its ratio of exports to China to imports from China. The petitioner does not explain how assisting U.S. distributors obtain additional imports from China demonstrates his ability to reduce the trade deficit with China as claimed.

Regarding his role with ERAI, the petitioner asserted:

> I worked with ERAI started out [sic] as [a] China Market Business Consultant, and became one partner of [its] new venture IAED. I designed and initiated [an] Asia/China market development plan and provided expertise for ERAI Asia client promotion, served special needs of incident mediation, address[ed] [the] challenge territory barrier[s] and cultural difference[s], and solve[d] clients' business problem[s]. The outcome is to promote U.S. business concept, stimulate international sales, encourage understanding, thus benefit[ing] the interest of American business, as well as contribut[ing] to the health of the national economy.

In his unsigned letter, Mr. Smith asserted that ERAI referred the petitioner to IAED and that the petitioner had worked "successfully" with ERAI. On appeal, Mr. Smith asserts that he is actually a founding member of ERAI, but fails to identify any contributions the petitioner made to that organization.

The petitioner submitted part of ERAI's employee handbook and his signature affirming that he received the handbook. He also submitted materials on joining ERAI. Finally, the petitioner submitted an e-mail addressed to a potential member advising that the petitioner, ERAI's "customer service agent for China, will be contacting you regarding your payment for your ERAI Membership Dues." None of this evidence suggests that the petitioner performed business management services for ERAI or its members.

The petitioner initially asserted that the BJRI was a U.S./Chinese joint venture controlled and operated by the U.S. Columbus Door Co. The petitioner claims to have organized board meetings, provided accurate assessments of the business environment in China, designed appropriate strategy and analyzed the problem . He further asserts that he was involved in the investigation which resulted in the American Chairman avoiding criminal charges in China. The petitioner submitted a board meeting agreements listing him as the "coordinator and interpreter." The signatures for the meeting include "BJRI Chinese Board Members," "BJRI US Board Members," and, under a separate heading, the petitioner as "Secretary and Interpreter." As such, it does not appear that he was a board member. The petitioner also submitted a letter from Ralph Costantino, Chairman of the Board, outlining the proposed strategy in the company's "critical situation." Mr. Costantino does not credit the petitioner with any part of the strategy.

In a separate letter, Mr. Costantino affirms that the petitioner is the Market Research Analyst and Supervisor of the China/Asia Market for the Columbus Door Company. This letter does not establish the petitioner's role in opening up the Chinese market to products manufactured by the Columbus Door Company.

In addition, the petitioner attests to his work for the Multi-Wall China Project and Hyman Brickle & Son, Inc. While the record verifies that Multi-Wall Packaging petitioned for the petitioner to receive a nonimmigrant visa, the record lacks evidence of the petitioner's contributions to either that company or Hyman Brickle & Son, Inc.

Further, the petitioner submitted several letters attesting to his abilities in vague terms. Douglas H. Joblings, Program Manager of the Rhode Island Small Business Development Center (RISBDC), references the petitioner's resume as evidence that the petitioner "helped U.S. companies to do business in Asia." Mr. Joblings asserts that the petitioner helped Top Pearl, Ltd. expand its business in Shenzhen, China. The record contains no confirmation of this claim from any official with Top Pearl. Michael J. Meagher, chairman of a law practice, references the petitioner's resume as evidence of his accomplishments. Joseph E. McWilliams, the petitioner's former professor, provide similarly vague information.

Shawn He, Chair of iNetwork 128, asserts that iNetwork 128 is "a pan-New England entrepreneur group consisting of over 1000 small and medium-sized (SME) business owners and executives." Mr. He asserts that the petitioner "has been an active member and participant in our initiatives and his contributions have been instrumental in the success of many of our programs." Mr. He, however, provides no examples or statistics demonstrating the petitioner's influence on a given business.

Robert Meissner, Jr., Chief Executive Officer (CEO) of MEI Search Consultants, asserts that the petitioner is "an active member and participant in an initiative co-sponsored by MEI and other trade-related organizations

and that his savvy contributions have been instrumental in the success of those programs." Without more specifics, we cannot conclude that this letter is evidence of the petitioner's track record of success in increasing U.S. exports to China.

Robert Heofer, Principal of Sengine, asserts that Sengine helps U.S. companies design and develop products and export technology and medical devices. He asserts that the petitioner was "able to get my company over the hurdle." Mr. Heofer concludes that as his company "becomes more involved in the export of products to China, [the petitioner] will be a more valuable resource for my growth." Mr. Heofer provides no examples of specific services provided by the petitioner or financial statistics reflecting the petitioner's influence. While this letter may attest to the petitioner's competence at his job, it does not document his influence over the field as a whole.

In an unsigned letter, Tony Stratopoulos asserts that the petitioner assisted his company, Zilex Electronics, recover money when defrauded by a Chinese vendor. Once again, this letter does not attest to the petitioner's abilities in opening Chinese markets to U.S. manufacturers.

Frank Wetmore, Vice President of Market Place Investors (MPI), asserts that the petitioner has served as MPI's foreign trade consultant where he has "helped our business take advantage of other global markets, thereby improving our sales and our communication capabilities." As with the above letters, while this letter may attest to the petitioner's competence at his job, it does not evidence his influence over the field as a whole.

On appeal, counsel discusses at length the importance of reducing the U.S. trade deficit with China and the significance of small business to the U.S. economy. We do not question the significance of small and medium businesses to the U.S. economy. Assuming that a reduction in the trade deficit is in the national interest, it is the petitioner's burden not only to demonstrate that he works in an area of national interest, but also that he has a track record of success in that area such that it is more than mere speculation to conclude that he will serve the national interest to a greater degree than a qualified U.S. worker. The evidence submitted does not support the petitioner's claimed successes in his field.

In addition to the new letter from Mr. Smith, discussed above, the petitioner also submits new letters from Mr. Meagher and Mr. He on appeal. Both letters include similar verbiage, concluding that the petitioner's significance in the field is evident from his involvement with the U.S. Small Business Administration in Rhode Island, the Rhode Island Export Assistance Center, the World Trade Center in Rhode Island, the Boston China Biz Roundtable, the Pan-New England International Entrepreneur Group (iNetwork 128) and the Alliance for the Commonwealth. The only evidence of the petitioner's involvement with any of these entities is discussed above. They attest to the lack of people with the petitioner's experience addressing the needs of small to medium sized businesses.

Mr. Meagher also references the petitioner's "relation with [the] China Council for the Promotion of International Trade ("CCPIT")." Mr. Meagher asserts that through this relationship, the petitioner "can develop a radial pipeline for U.S. small businesses to tap into the expanding China market." The record contains a single letter from CCPIT's Arlington, Virginia office. In the letter, addressed to the petitioner, Zhang Danqing introduces the organization and concludes: "If possible, we'll be more than happy to visit your State, to meet some people from [the] Department of Commerce, Export Administration Center, or Chamber, giving a presentation on our Chamber." Mr. [redacted] then indicates that he is including information about CCPIT. The tone of this letter does not suggest a prior relationship between the petitioner and CCPIT. Rather, it appears to

be an informational response to a telephone inquiry by the petitioner. Mr. [redacted] does not propose working with the petitioner. Rather, he agrees to meet with more distinguished entities in the petitioner's home state, if requested.

Further, we acknowledge that, as a consultant, the petitioner is self-employed. Citizenship and Immigration Services (CIS) acknowledges that there are certain occupations wherein individuals are essentially self-employed, and thus would have no U.S. employer to apply for a labor certification. While this fact will be given due consideration in appropriate cases, the inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field. *Id.* at 218, n. 5. The petitioner has begun his own consulting company, Across Nation International. The petitioner failed to submit any financial documents, press coverage (in the general media or trade journals) or other evidence of this company's success and influence in the field. As such, the petitioner has not established that his work with his own firm has been remarkably influential in the field.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.